

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

RSA No.1599 of 2006 (O&M)

Date of decision : 04.10.2007

Sham Lal

... Appellant

Versus

Gurnam Singh

... Respondents

Present : Mr. Maharaj Kumar, Advocate, for the appellant.

Vinod K.Sharma, J. (Oral)

C.M.No.4043 C of 2006

For the reasons stated in the application, the delay of 223 days in refilling the appeal is condoned.

C.M. stands disposed of.

RSA No.1599 of 2006

This Regular Second Appeal has been filed against the judgment and decree dated 13.5.2005 passed by the learned Additional District Judge, Karnal vide which suit filed by the plaintiff for permanent injunction has been ordered to be dismissed.

The plaintiff claimed that he was in cultivating possession of agricultural land measuring 20 Killas situated in Village Nangal, Tehsil Indri, District Karnal for the last 17 years i.e. since 1984. The land was shamilat in the village and plaintiff is in possession of it being proprietor since 1984. It was claimed that the defendant has no concern with the land in dispute and he was interfering in the peaceful possession of the plaintiff over the suit property. The suit was contested on the ground that the plaintiff had no locus standi to file the present suit and that the suit is bad for mis-joinder and non-joinder of necessary parties. It was claimed that the suit was not maintainable in the present form. It was also claimed that

the plaintiff has no cause of action to file the present appeal. The possession of the plaintiff over the land in dispute was denied. It was claimed that the defendant and other co-sharers were in possession of the disputed property. It was claimed that the defendant and other co-sharer have moved an application for correction of khasra girdawari qua the suit land before revenue authorities and thereupon, Kanungo visited the suit land and found that the possession over the suit land was of the defendant. It was also claimed that the plaintiff also admitted the possession of the defendant and other co-sharers over the land in dispute in a compromise effected between the parties before the Police Post, Biana Police Station Indri. It was claimed that the suit was counter blast to the application moved by the defendant for correction of the khasra-girdawari which the answering defendant claimed to be in physical possession of the property.

On the pleadings of the parties, following issues were framed :-

- “1. Whether the plaintiff is entitled for the relief of permanent injunction as prayed for? OPP.
2. Whether the plaintiff has no locus standi to file and maintain the present suit? OPD
3. Whether the suit is bad for mis-joinder and non-joinder of necessary parties? OPD
4. Whether the plaintiff is estopped from filing the present suit by his own act and conduct? OPD.
5. Whether the plaintiff has not come to the court with clean hands and has suppressed the material and true facts from the court? OPD.
6. Whether the suit is not maintainable in the present form? OPD.,
7. Whether the present suit has not been properly valued for the purpose of court fee and jurisdiction? OPD.
8. Relief.”

Learned courts below on appreciation of the evidence on record, came to the conclusion that the plaintiff failed to prove his possession over the suit land. Hence it was held that he was not entitled to any injunction in view of the finding on issue No.1. Issue No.2 was decided in favour of the plaintiff whereas on issue No.3, it was held that the suit was bad for non-joinder of necessary party.

On issue No.4, it was held that the plaintiff has failed to establish his possession when he has admitted possession of defendants before several other villagers and was decided against the plaintiff and in favour of defendant. However, issue No.5 was decided in favour of the plaintiff.

Consequently, the suit was dismissed. In appeal, the learned Additional District Judge, Karnal affirmed the findings recorded by the learned trial Court. Learned trial court held that the plaintiff has failed to prove his possession over the suit land and therefore, was not entitled to any injunction, as prayed. The finding of fact recorded by the learned Courts below on appreciation of evidence are not open to challenge in Regular Second Appeal.

Thus, there is no ground to interfere in the impugned judgments and decrees of the learned Courts below.

Dismissed.

[Vinod K.Sharma]

Judge

04.10.2007

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